

IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

SWP no. 224/2016
IA no. 01/2016

Reserved on: 29.07.2019
Pronounced on: 31.07.2019

Nighat Ara

.... Petitioner

Through:- Mr T. H. Khawja, Adv

v/s

State of J&K and others

.... Respondent(s)

Through:- Mr Sheikh Feroz, Dy. AG for R-1 to 6
Mr M. A. Beigh, Advocate for R-7

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge

Whether approved for reporting: Yes/No

JUDGMENT

1. By this writ petition, the petitioner is seeking the following relief:

"I. An appropriate writ for quashing impugned Enquiry Report authored by respondent no. 6 to the extent it provides that selection should have been restricted to so called location Karhama 'E'.

II. An appropriate writ quashing order dated 30.12.2015 issued by respondent No. 5 as also order dated 17.2.2016 issued by respondent no. 5.

III. An appropriate writ in the nature of mandamus or any other appropriate writ, commanding the respondents to allow the petitioner join on the post in furtherance of engagement order already issued in favour of petitioner.

IV. Any other writ, order or direction which this Hon'ble Court deems just and proper, be issued in favour of the petitioner."

2. Briefly stated the case of the petitioner is that respondent no. 4, in terms of advertisement notice dated 23.8.2010 invited applications from the eligible candidates for engagement as Anganwadi Workers in various Anganwadi

Centres detailed out in the said advertisement notice. Among others, vacancy at Anganwadi Centre Karhama was also sought to be filled up in terms of the said notification.

3. On completion of the selection process a merit list of eligible candidates was drawn and the petitioner came to be selected.

4. Feeling aggrieved, respondent no. 7 challenged the selection of petitioner in a writ petition, SWP no. 2715/2011, which on consideration and upon hearing the parties, was disposed of in terms of order dated 22.7.2015.

The operative portion of the order, for facility of reference, is reproduced hereunder:

“This writ petition along with connected IAs is disposed of and Deputy Commissioner, Baramulla, is directed to get an enquiry conducted by Senior Revenue Officer of the district to ascertain whether the village, Karhama was bifurcated into Patis or Mohallas and further to ascertain whether Karhama is a location in the village or the markings A, B, C, D and E were given only to identify the anganwadi Centers in absence of locations being available in the village. In the enquiry the petitioner, official respondents and private respondents shall be afforded opportunity of hearing. The document/ material which the parties may produce shall also be considered. On the report of the enquiry officer the respondent no. 3 shall pass orders either maintaining the engagement of private respondent or cancelling the same and engaging the petitioner, depending upon the report of the enquiry officer. The enquiry be concluded within four weeks from the date copy of this order is served to Deputy Commissioner, Baramulla. Parties to provide necessary assistance to the enquiry officer. In case it is found that Karhama is not an identifiable location then respondent no. 3 shall allow respondent no. 5 to join the services.”

5. The Deputy Commissioner, Baramulla, in compliance of the directions as were passed in the writ petition *supra*, appointed the Sub Divisional Magistrate, Gulmarg as the Enquiry Officer in the matter in terms of Order No. DCB/ARA/LC/4/Kawarhama/08 dated 19.08.2015.

6. The Enquiry Officer, conducted the enquiry and submitted his report to the Deputy Commissioner, in terms of his No. SDM/G/2015/1085 dated 24.11.2015. The relevant portion of the Enquiry Report is taken note of hereunder:

“The Kwarhama village is already covered under four (4) Anganwadi centers i.e. Kwarhama (A) (B), (C) and (D) established in Mir Mohalla, Khan Mohalla, Sheikh Mohalla and Bund Mohalla/ Ganie Mohalla respectively.

As the village is a big estate and is divided into ten Panchayat Wards and as per the Panchayat Electoral roll of Panchayat elections of the year 2011 of village Kwarhama Mst. Shaheena D/o Gh. Ahmad Teli (petitioner) is the elector of Panchayat ward (3) of village Kwarhama and is figuring at S.No:62 (pertinent to mention here that Anganwadi center Kwarhama F is established in the said panchayat ward i.e. Panch ward (3) of village Kwarhama), while as Mst. Nighat Ara W/o Hilal ahmad Ashaie (respondent no. 5 is the elector of Panch ward (7) of village Kwarhama and is enrolled at S. No. 112 of said Panchayat ward which stands already covered under the scheme as AWC Kwarhama B.

The Lumberdar of village Kwarhama Mr. Gh. Mohd Mir S/o Assadullah Mir and Chowkidar concerned Mr. Habibullah Malla s/o Gh. Qadir Malla R/o Kwarhama stated that AWC Kwarhama (F) sanctioned in year 2010 has been established in Rather Mohalla that part of village to which complainant Shaheena Bano D/o Gh. Ahmad Teli belongs and Nighat Ara w/o Hialal ahmad Ashie (selectee) resides in Khan Mohalla part of the village which is already covered under the scheme and the existing Anganwadi center (B) is located at stone throwing distance from her residence.

There is no location A, B, C, D and E in village Kwarhama however there are Mohalla's for the interior identification of the village like Mir Mohalla, Khan Mohalla, Bunn Mohalla, Sheikh Mohala, Rather Mohala, Ganie Mohala etc. The said Mohala's are not recorded in revenue records however do exist on ground level for interior identification of the village.

The authorities should have confined the selection of AWW amongst the applications received from uncovered hamlet i.e., Kwarhama F as per the Govt. order issued by Secretary Govt. Social Welfare Deptt. Vide No. 91-SW of 2010 dated 19.04.2010 as endorsed vide No: SWC/Estd/153/2007 dated 19.04.2010.”

7. On the basis of enquiry, the respondent, Deputy Commissioner, Baramulla, while declaring the engagement order of the petitioner as illegal in the eyes of law and cancelled the same. He further directed the District Programme Officer, ICDS, Baramulla/ CDPO, ICDS, Kunzer to issue fresh order in favour of Shaheena D/o Ghulam Ahmad Teli R/o Karhama, respondent/ petitioner therein, in terms of Order dated 30.12.2015

8. The petitioner is challenging the Enquiry report and the order dated 30th December, 2015, of the Deputy Commissioner, Baramulla, on the ground that the Enquiry Officer has gone beyond the mandate of reference made by this Court in terms of order dated 22.7.2015.

9. Respondents appeared and filed their reply resisting the claim of the petitioner. It is stated in the reply that the actions impugned in the writ petition are based on a thorough enquiry that was conducted in compliance to the directions of this court as were passed in SWP no. 2715/2011. It is further stated therein that the claim of the petitioner is devoid of merit, therefore, denied.

10. I have heard learned counsel for the parties.

11. Learned counsel for the petitioner, Mr T. H. Khawja, has invited attention of this Court to the order passed in the writ petition, SWP no. 2715/2011 dated 22.7.2015, to indicate that this court had very specifically directed the Deputy Commissioner to get an enquiry conducted by a Senior Revenue Officer of the district to ascertain *“Whether Karhama E is a location in the village or the markings A, B, C, D and E were given only to identify the anganwadi Centers in absence of locations being available in the village”*. Learned Counsel further submits that since the enquiry, conducted in the

matter, has gone beyond the mandate of the directions of this court, therefore, the same is bad in law, as such, requires to be set-aside.

12. He further submits that the action taken by the Deputy Commissioner, Baramulla, on the basis of an enquiry report which has gone beyond the prescribed limits, is equally bad in law, therefore, requires to be quashed and petitioner taken back in service.

13. Learned counsel appearing for the respondents submit that the Enquiry Officer, during the course of enquiry, came to the conclusion that the petitioner is not the resident of the area for which the anganwadi center was established and submitted his report accordingly. They further submit that the respondent Deputy Commissioner has acted on the enquiry report and cancelled the appointment of petitioner which is not against the mandate of the directions of this Court in any way.

14. Considered the submissions made and went through the material placed on record.

15. The controversy as is seen from the pleadings of the parties revolves around the filling up of vacancy at the Karhama Anganwadi Center. The petitioner before the court had emerged as a selected candidate and engaged as such. The engagement was questioned in a writ petition that was disposed of with a direction to the Deputy Commissioner to get the matter enquired into. The Court while so directing had fixed the domain of the enquiry as well by setting its limits. All that was required on the part of the Enquiry Officer was to confine himself to the said limits fixed by the Court and do not traverse. However, on the plain reading of the enquiry report one comes to the inescapable conclusion that the scope and domain of the enquiry, as it was ordered to be made, has been widened by the Enquiry Officer to his liking

when he discusses the electoral roll; panch wards; panchayat halqas etcetera in the report. The limited job assigned to the Revenue Authority was to:-

- i) Ascertain whether the village Karhama was bifurcated into Patis or Mohallas;*
- ii) Whether Karhama E is a location in the village or the markings A, B, C, D and E were given only to identify the Anganwadi Centers in absence of locations.*

16. There must have weighed something with the Court when it fixed the limits of the enquiry, therefore, it was binding on the Enquiry Officer to have confined himself within the scope only and not to traverse beyond. In that view of the matter the enquiry report made in the matter cannot be accepted. Since the enquiry report in question has been held to be unacceptable, being not in tune with the directions of this Court as were passed in SWP no. 2715/2011, therefore, the action taken pursuant to such report by the Deputy Commissioner, Baramulla, cancelling the engagement of petitioner and ordering engagement of respondent no. 7 is bad too.

17. The Deputy Commissioner, Baramulla, respondent no. 5, has also traversed beyond his limits by declaring the engagement of petitioner as bad in the eyes of law and ordering cancellation of the engagement. The Court had laid down the methodology that had to follow as a sequel to the enquiry report and the action of the respondent no. 5, being again not in tune with the directions of the court, requires to be set-aside.

18. For all what has been said hereinbefore, the writ petition succeeds and is allowed as such. The impugned enquiry report and the order dated 30.12.2015, being not in conformity with the directions of this court passed in

SWP no. 2715/2011, are set-aside with a direction to the Deputy Commissioner, Baramulla, to assign the matter to some other Revenue Officer, not below the rank of Assistant Commissioner to report only as to whether the Karhama Village was bifurcated into Patis or Mohallas and whether the Karhama E is a location in the village or the markings A, B, C, D and E were given only to identify the Anganwadi Centers in absence of locations available in the village. Needless to say that during the process the material which the parties may rely upon shall be considered and parties shall be heard during the process. It would be the respondent no. 3, District Programme Officer, ICDS, Baramulla, who would act on the enquiry report and order engagement of the suitable candidate. Since much time has already gone wasted in the matter, therefore, the exercise be undertaken expeditiously and report furnished to the Deputy Commissioner. The entire process shall be completed as expeditiously as possible preferably within a period of ten weeks from today.

19. The Writ petition is disposed of along with connected IA on the above terms.

(Ali Mohammad Magrey)
Judge

Srinagar
31.07.2019
Amjad Lone PS